

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 4, 2004

Agenda ID# 4029
Alternate to Agenda ID# 3936
Ratesetting
11/19/04 Item # _____

TO: PARTIES OF RECORD IN APPLICATION 02-12-027 ET AL.

RE: NOTICE OF AVAILABILITY OF ALTERNATE PROPOSED DECISION OF COMMISSIONER BROWN ON PHASE ONE DECISION COST OF SERVICE TEST YEAR 2004 FOR SOUTHERN CALIFORNIA GAS COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY.

Consistent with Rule 2.3(b) of the Commission's Rules of Practice and Procedure, I am issuing this Notice of Availability of the above-referenced alternate proposed decision by Commissioner Geoffrey F. Brown that was issued on November 4, 2004. An Internet link to this document was sent via e-mail to all the parties on the service list who provided an e-mail address to the Commission. An electronic copy of this decision can be viewed and downloaded at the Commission's Website (www.cpuc.ca.gov).

Any recipient of this Notice of Availability who is not receiving service by electronic mail in this proceeding may request a paper copy of this document from the Commission's Central Files Office, at (415) 703-2045; e-mail cen@cpuc.ca.gov.

This is an alternate proposed decision of Commissioner Brown, to the proposed decision of ALJ Long, previously mailed to you. It will be on the Commission's agenda on November 19, 2004. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft or alternate decision, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

As set forth in Rule 77.6, parties to the proceeding may file comments on the enclosed alternate order no later than November 12, 2004, and reply comments no later than November 16, 2004. An original and four copies of the comments with a certificate of service shall be filed with the Commission's Docket Office and copies shall be served on all parties on the same day of filing. Anyone filing comments shall electronically serve their comments on Commissioner Brown's Gas advisor, Belinda Gatti, at beg@cpuc.ca.gov and assigned ALJ Long, at dug@cpuc.ca.gov. For those who have not provided electronic addresses, printed copies of the comments shall be served by first class mail or another expeditious mode of delivery.

/s/ ANGELA K. MINKINAngela K. Minkin, Chief
Administrative Law Judge

AKM:ccv

Attachment

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER BROWN**
Mailed 11/4/2004**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of SOUTHERN CALIFORNIA GAS COMPANY for authority to update its gas revenue requirement and base rates. (U 904 G)

Application 02-12-027
(Filed December 20, 2002)

Application of SAN DIEGO GAS & ELECTRIC COMPANY for authority to update its gas and electric revenue requirement and base rates. (U 902-M)

Application 02-12-028
(Filed December 20, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.

Investigation 03-03-016
(Filed March 13, 2003)

(See Appendix A for a list of appearances.)

**PHASE ONE DECISION
COST OF SERVICE TEST YEAR 2004 FOR
SOUTHERN CALIFORNIA GAS COMPANY AND SAN DIEGO GAS &
ELECTRIC COMPANY**

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SoCalGas & SDG&E

**PHASE ONE DECISION
COST OF SERVICE TEST YEAR 2004 FOR
SOUTHERN CALIFORNIA GAS COMPANY AND SAN DIEGO GAS &
ELECTRIC COMPANY**

I. Summary

This decision resolves issues litigated in the revenue requirement phase (Phase 1) for Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) in the consolidated applications for Test Year 2004 Cost of Service. Pursuant to Rule 51 *et seq.* of the Commission's Rules of Practice and Procedure, we consider two settlement agreements: (1) an all party settlement supported by SoCalGas, the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), Utility Workers Union of America (UWUA), Local 483 UWA, Southern California Generation Coalition (SCGC) and Greenlining Institute (Greenlining) addressing Phase 1 of SoCalGas Cost of Service Proceeding; and (2) a settlement supported by SDG&E, ORA, Greenlining, Coral Energy Resources, LP (Coral), and the Coalition of California Utility Employees (CUE) addressing Phase 1 of SDG&E Cost of Service Proceeding.

We find that the Settlements are generally reasonable in light of the whole record, consistent with the law, and in the public interest. While settlements by nature are to a certain extent a "black box", we are satisfied that the Settling Parties presented thorough detailed Settlement Agreements and therefore determine that these settlements are in the public interest. The Settlements resolve all issues with two exceptions: (1) the method of recovery of fumigation-related costs and (2) the gas resource plan. The fumigation-related costs are determined in this decision. We find that the supplemental testimony submitted

by SoCalGas and SDG&E is insufficient to make a determination and defer the gas resource plans to the next BCAP.

The SoCalGas Settlement was unopposed and we adopt the SoCalGas settlement without change. The SDG&E Settlement was opposed by the Utility Consumers' Action Network (UCAN) and the City of Chula Vista. We have made two modifications to the SDG&E Settlement: (1) we decline to adopt the Otay Mesa Pressure Betterment Project as part of the capital additions for SDG&E; (2) we adjust SDG&E's portion of the San Onofre Nuclear Generating Station (SONGS) revenue to reflect the amount adopted in Decision 04-07-022 in Southern California Edison's General Rate Case, the proceeding in which the SONGS issue was litigated. Both of these modifications are discussed in detail.

We authorize for SoCalGas \$1,457,008 million in natural gas distribution revenues for Test Year 2004. We authorize SDG&E \$754,439 million in electric distribution revenues and \$203,448 million in natural gas distribution revenues for Test Year 2004.

II. Overview of the Applications

SoCalGas and SDG&E filed individual applications seeking to revise their base rate revenue requirements effective January 1, 2004, and seeking authority to establish a formula to adjust the revenue requirement for 2005 through 2008. The applications did not propose joint rates or a single common revenue requirement.

Pursuant to Rules 45 and 55 of the Commission's Rules of Practice and Procedure (Rules),¹ a joint motion for consolidation of the separate applications

¹ Unless otherwise noted all subsequent references to Commission Rules are to the Commission's Rules of Practice and Procedure published as of May 2003.

was filed concurrently with SoCalGas' A.02-12-027 and SDG&E's A.02-12-028 on December 20, 2002, respectively, for authority to update their gas and electric revenue requirements and base rates. SoCalGas requested an approximate \$130 million increase in natural gas distribution revenues for Test Year 2004 and SDG&E requested an approximate \$58.9 million increase in electric distribution revenues² and \$21.6 million increase in natural gas distribution revenues for Test Year 2004.

In addition, both companies sought authority for "Margin Per Customer" (MPC) indexing mechanisms. The two companies' requested revenue requirements included virtually all their expenses for operation, maintenance, safety, and general expenses. By Ruling, the applications were consolidated on January 22, 2003. On March 13, 2003, the Commission issued Order Instituting Investigation (I.) 03-03-016 to allow the Commission to hear proposals other than the applicants', and to enable the Commission to enter orders on matters for which the utilities may not be the proponent.

These applications were not filed in conformance with the Commission's rate case processing plan, as discussed below. They are in conformance with specific exemptions granted as a part of previously adopted incentive ratemaking mechanisms.

² This includes the effects of nuclear costs after the termination of the Incremental Cost Incentive Plan (ICIP).

The requests by both companies for indexing mechanisms and all consideration of any form of incentive ratemaking is in Phase Two of these proceedings.³

III. Procedural History

Prehearing conferences (PHCs) were held on February 19, 2003, March 7, 2003, and September 26, 2003.

Public participation hearings were held in August and September 2003, in SoCalGas' service territory in Van Nuys, El Monte, Carson, and San Bernardino, and in SDG&E's service territory in San Diego and San Clemente. The number of these hearings was necessarily curtailed because of budget constraints.

Evidentiary hearings on Phase One distribution service revenue requirements were held beginning October 7, 2003, and a total of 20 days were used for hearings. Settling parties filed opening briefs on January 20, 2004. On February 4, 2004, non-settling parties filed opening briefs, and all parties filed reply briefs on February 19, 2004. Phase 1 of these proceedings was submitted on February 19, 2004. Testimony was received in evidentiary hearings from numerous witnesses, and over 300 exhibits were received in evidence.⁴ All issues are ready for consideration with the exception of the issues involving SoCalGas and SDG&E's requests for incentive ratemaking mechanisms and the

³ Ruling Clarifying the Scoping Memo and Modifying the Schedule dated May 22, 2003. We affirm the deferral in this decision.

⁴ Without separately counting errata, SoCalGas and SDG&E sponsored 150 exhibits of direct and rebuttal testimony; ORA, 33 direct and cross-examination exhibits; TURN, 60 direct and cross-examination exhibits and UCAN, 47 direct and cross-examination exhibits.

methodology for future attrition adjustments. These questions were deferred to Phase Two by the May 22, 2003 *Ruling Clarifying the Scoping Memo and Modifying the Schedule*.

The April 2, 2003 *Assigned Commissioner's Ruling Establishing Scope, Schedule and Procedures for Proceeding* (Scoping ACR) designated the assigned Administrative Law Judge (ALJ) as the principal hearing officer as defined in Rule 5(l) of the Rules. It also determined that these proceedings are ratesetting proceeding. Pursuant to Rule 5(k)(2), the principal hearing officer is the presiding officer for this proceeding. Accordingly, the proposed decision of the ALJ was issued pursuant to Rule 8.1(b), which requires issuance of a proposed decision by the presiding officer.

D.03-12-057 granted interim rate relief to SoCalGas and SDG&E⁵ by establishing memorandum accounts to track any eventual difference in current rates and any increase or decrease adopted by this decision for Test Year 2004.

IV. Test Year Forecast Methodology

SoCalGas and SDG&E used the following method to estimate Test Year 2004 expenses. For both SoCalGas and SDG&E, a Base Year 2001 of recorded data was identified and then adjusted for known downward changes for one-time or non-recurring expenses; the residual Base Year was then escalated for inflation in 2002, 2003 and Test Year 2004. To this adjusted base, SoCalGas and SDG&E added any forecast for new activities begun in 2002, 2003 or forecast for 2004. This addition was in 2004 dollars. The escalated base year with the two

⁵ April 18, 2003, SoCalGas and SDG&E filed a Motion seeking reconsideration of the April 2, 2003 Scoping Memo. The May 22, 2003 Ruling clarified the Scoping memo as appropriate and D.03-12-057 was necessary to grant the interim relief request.

adjustments for changes formed the basis for the test year estimate. SoCalGas and SDG&E then provided testimony to justify the level of activity and the purpose of the activity represented by the estimate. This is similar to a “budget-based” method that the Commission found to be reasonable if properly applied (see *Southern California Edison*, 64 CPUC 2d 241, 316 (D.96-01-001) or *California Water Service Company* D.03-09-021, mimeo., pp. 35 and 36.) As discussed in detail elsewhere, this methodology is a reasonable starting point to meet the burden of proof for SoCalGas and SDG&E Test Year 2004 expense estimates. Where SoCalGas and SDG&E used a different method to forecast Test Year 2004 they provided a specific explanation and offered a justification for that method. The appropriateness of this method depends upon a thorough review of the supporting data.

ORA varied its methodology, from account-to-account as discussed in detail where applicable.

TURN raised what it believed were serious concerns about the SoCalGas and SDG&E forecast methodology, including its development of Base Year 2001 costs. It cited the large number of adjustments and reallocations made by SoCalGas and SDG&E⁶ and pointed out that recorded 2002 data, available late in the proceeding, were different than the forecast 2002 expenses, one step towards estimating Test Year 2004. But we decline to constantly shift between the methods as filed and selective use of 2002 recorded data. We see this as a problem inherent in parties not having the opportunity to review an NOI, compounded by the overlap of other major rate cases. As we consider the test

⁶ TURN opening litigation brief, pp. 9-13.

year estimates in this decision, we used the best information provided by the parties in the record and we add whatever safeguards we deem appropriate to the specific circumstances.

UCAN made similar objections to the Base Year 2001 and subsequent forecast method used by SDG&E; again, we will work with the data we have available. UCAN also argued that the rate application as filed is an inadequate base for rates to be in effect for five years.⁷

V. Return to the Rate Case Processing Plan

The applications filed by SoCalGas and SDG&E were not subject to a preliminary review by ORA. For a general rate case, this typically involves the applicant filing a NOI, which is in effect a draft application. This was true for PG&E (A.02-11-017) and Edison, A.02-05-004. Under the rate case processing plan,⁸ ORA must review the NOI and provide a timely list of requirements, “deficiencies,” which the applicant addresses in order to file an acceptable application. This step was omitted under the procedure adopted by D.97-12-041. The lack of a NOI greatly hindered the timely and thorough review of the applicants’ filings, leading to ORA and other intervenors spending too much time on discovery of data that should have been addressed in the applications and supporting work papers. Based upon our current experience in litigating these two proceedings we believe that the filing requirements for SoCalGas and SDG&E’s subsequent change in authorized base electric and gas revenue requirements should revert to the extant rate case processing plan. The lack of

⁷ UCAN opening litigation brief, p. 42.

⁸ See D.89-01-040, 30 CPUC 2d 576, in R.87-11-012.

the NOI process this time had the direct effect of increasing the difficulty for ORA and the other intervenors to justify through litigation their exceptions to the applications. The burden of proof lies fully on the applicants, notwithstanding the expertise of ORA and others to effectively critique and challenge the applicants' filing. See the extensive discussion of our policy in D.00-02-046 including this excerpt:

“Pursuant to Section 309.5, consumer interests are now represented by Commission staff dedicated to the goal of the lowest possible rates consistent with safe and reliable service. Consumer interests are also represented by effective consumer organizations which are experienced in the complexities of utility regulation and which, in some cases, are supported in part by a statutory plan of compensation of intervenors who contribute substantially to Commission's decisions. Still, even today, it is our experience that in comparison to other parties, utilities typically are better able, and have the greater incentive, to muster a large arsenal of resources to support their proposals.” (D.00-02-046, mimeo., p. 35.)

Nothing about this requirement in anyway prejudices the nature of any likely incentive mechanism that may yet be adopted in Phase 2 of this proceeding.

In the settlements, the parties agree that SoCalGas and SDG&E will file a NOI as a part of the next cost of service or general rate case (GRC) application, in a manner and on a schedule consistent with the provisions of the rate case plan adopted in D.89-01-040, as modified by the Commission.”⁹ We however are going further and direct SoCalGas and SDG&E to file GRCs in compliance with

⁹ SDG&E Settlement Agreement, p. 15.

D.89-01-040, as modified. We also direct that TURN and UCAN shall be allowed to review the NOI and may provide a list of deficiencies to ORA's project manager for possible inclusion in the NOI deficiencies notice in addition to those identified by ORA.¹⁰ Although this requirement is not part of either Settlement, we view it as an enhancement to the Settlement which will help ensure that all pertinent issues are litigated fully.

SoCalGas and SDG&E should file their applications in accordance with the rate case processing plan as adopted by the Settlement for a Test Year 2008.

VI. Commission Review of the Settlements

The primary purpose of this proceeding is to determine the base revenue requirements necessary for SoCalGas' natural gas distribution and SDG&E's electric and gas distribution. As noted above, the Settlements would address our core question in this proceeding by resolving virtually all of the disputed issues in the revenue requirement phase of SoCalGas and SDG&E TY 2004 Cost of Service.

¹⁰ We do not need to separately modify the rate case processing plan in order to impose this additional requirement or provision on the next SoCalGas and SDG&E general rate cases. This is consistent with Conclusion of Law 1(c) and (d) in D.89-01-040:

“c. DRA's project manager should be the designated coordinator for transmitting NOI deficiencies. Utilities should be allowed to appeal DRA's list of deficiencies by filing a protest with the Executive Director. The Executive Director's determination should be final.

d. DRA's project manager should have primary responsibility for accepting changes to the utility's NOI filing. Utilities should be allowed to appeal DRA's determination by filing a formal motion for the acceptance of NOI changes.” (DRA was a predecessor to ORA.)

On December 19, 2003, SoCalGas and SDG&E filed Motions for adoption of the settlements on Test Year 2004 revenue requirements. The Settling Parties request that the Commission: (1) adopt the Settlement Agreements; (2) authorize SoCalGas and SDG&E to modify rates for services rendered on and after January 1, 2004, consistent with the terms of the Settlement Agreement; and (3) grant such other and further relief as the Commission finds just and reasonable.

A. The SoCalGas Settlement

Pursuant to Rule 51.1(c) of the Commission's Rules of Practice and Procedure, the motion was filed by SoCalGas, ORA, TURN, UWUA, Local 483, SCGC and Greenlining (collectively the "SoCalGas Settling Parties") addressing Phase One of the above-captioned SoCalGas Cost of Service (COS) proceeding. As required by Rule 51.1(c), Attachment D to the SoCalGas Settlement is a comparison exhibit indicating the effect of the SoCalGas Settlement in relation to SoCalGas' showing and to issues ORA contested. All active parties in the SoCalGas portion of the proceeding are signatories to the SoCalGas settlement. The Settlement is reproduced as Appendix G in this decision.

The SoCalGas Settlement would resolve all issues raised by the Settling Parties regarding SoCalGas' forecast TY 2004 gas distribution revenue requirements, and 2005, 2006, and 2007 gas distribution revenue requirements, with two exceptions. The Settlement includes two unresolved issues for SoCalGas: (1) the method of recovery of fumigation-related costs and (2) the gas resource plan.

The Settlement, as filed on December 19, 2003, provides a 2004 revenue requirement in the amount of \$1,457,008,000 which is \$70 million less than SoCalGas' final litigation position.

1. Distribution Expense

The Settlement adopts a Distribution Expense of \$132,450,000. Major reductions from SoCalGas' original request include \$436,000 for freeway/franchise O&M, \$998,000 for maturing workforce, and \$1,500,000 for leak backlog reduction (SoCalGas will not get the funding increase, but also will leave the leak backlog at the 5 year average 8000). For underground gas storage and gas transmission expense, the Settling Parties agree to utilize the company's forecast.

2. Gas Storage and Transmission Expense

For underground gas storage and gas transmission expense, the Settling Parties agree to utilize the company's estimated test year revenue requirement.

For freeway/franchise Operating and Maintenance Expenses, the Settling Parties agree to reduce SoCalGas' request funding in Account 887 by \$436,000.

3. Customer Services

The Settling Parties agree to customer service expenses to \$15.6 million less than requested by SoCalGas. The largest reductions from SoCalGas' requests for Customer Services are \$7.7 million related to Customer Assistance Expenses, \$1.9 million related to Customer Records and Collection Expenses, and \$5.1 million related to Customer Installation Expenses.

a) Customer Installation Expense

As part of the Customer Installation Expense, the Settling Parties agree that the funds will allow SoCalGas to replace tin meters at the rate proposed by SoCalGas in the proceeding of approximately 100,000 per year over five years, as well as other planned meter replacements as proposed by SoCalGas, but none of

SoCalGas' request for Rockwell meter replacements.¹¹ However, the Settlement allows SoCalGas to redirect replacement work from tin meters to Rockwell meter to the extent that any family or families of Rockwell meters fall outside of allowed accuracy tolerances during the term of this settlement.

b) Customer Records and Collection Expenses

This is a major account dealing with labor and non-labor expenses for the Customer Contact Center, branch office and authorized payment locations, customer billing, credit and collections, bill distribution, bill payment processing and meter reading supervision.

The Settlement adopts a revenue requirement that is \$1,944,000 less than requested by SoCalGas, which amounts to adoption of more than half of ORA's proposed adjustments for this account as a whole. The reduction in SoCalGas' request represents a compromise with respect to all the issues as a group, not a resolution of individual issues in this account.

4. Administrative and General Expenses

In Administrative and General expenses, the Settlement reflects \$29,495 million less than SoCalGas' end of hearing litigation position. There are eight accounts, with sub-parts, where SoCalGas and ORA had differences of \$49.956 million at the end of litigation in Test Year 2004 estimates. Only 50% of SoCalGas' forecast for costs associated with the incentive compensation plan and

¹¹ SoCalGas has already replaced all 18,000 tin meters located under structures in its service territory (Ex. 7, p. 32). The proposal here would provide for replacement over five years almost all remaining tin meters (500,000 of the remaining 542,000 tin meters).

spot cash awards is included in the Settlement. This represents a reduction of \$10.954 million.

The Settlement also reflects a decrease in Directors and Officers' liability insurance of \$2.495 million, a \$1.1 million decrease in Regional Public Affairs funding a 50% decrease in funding for supplemental pensions (for a reduction of \$585,000) and reductions in other benefits as described below. For Medical, Dental, and Vision benefits, SoCalGas' updated estimates are adopted in the Settlement, subject to \$2.3 million generic adjustment for reduced workforce projections. Other benefits are subject to a \$2 million adjustment to reflect parties concerns regarding the appropriateness of including in rates certain benefits such as executive life insurance. The Settlement therefore reflects litigation risks, but also protects against some of SoCalGas' major concerns, such as pension contributions requirements and medical cost increases. SoCalGas will have a two-way balancing account that allows SoCalGas to recover minimum-required pension contributions.¹²

5. Corporate and Shared Services

In Corporate Center charges, the Settling Parties agree to a \$7.47 million reduction to the SoCalGas forecast; which addresses both the settlement's inclusion of only 50% of costs associated with the incentive compensation plans and supplemental pensions and significant reductions of the costs requested to provide other benefits, as well as a compromise regarding disputed positions at the Corporate Center and certain expense allocations from the Corporate Center.

¹² This is subject to one exception: if the minimum-required contribution in any year exceeds the estimate for that year that SoCalGas provided in its testimony, shareholders will have to pay 20% of the excess.

In Utility Shared Services the Settling Parties agree to the \$1.2 million reduction from the SoCalGas forecast. This resolves concerns about the ability to reconcile some of these costs, and also to account for reductions in these charges that would occur due to other reductions in the Settlement Agreement.

6. Gas Industry Restructuring Implementation

The SoCalGas Settlement defers without prejudice for determination in a proceeding other than this one, SoCalGas request for recovery to capital costs for software development projects to implement the Gas Industry Restructuring.

7. Rate Base

The Settling Parties agree to rate base for SoCalGas of \$2.3 billion. This is a reduction of \$70 million from SoCalGas' request. TURN sought to decrease SoCalGas' working cash requirement (and rate base) by approximately \$87 million on a variety of grounds. The Settling Parties agree to a rate base reduction of \$35 million associated with working cash, and an additional \$35 million reduction in capital additions, to arrive at the \$70 million reduction in rate base.

8. Fumigation Related Costs

The method of recovery of fumigation related costs is one of the two issues not resolved by this settlement. In October 2002, a new Department of Transportation (DOT) regulation terminated the fumigation contractor's authorization to turn-off/turn-on gas meter service before and after performing tented fumigation jobs.¹³ The Settlement reflects the fumigation funding levels recommended by SoCalGas, but does not resolve whether this cost should be

¹³ Code of Federal Regulations Title 49, Part 192, Subpart N-Operator Qualifications.

recovered through base rates or through a separate fee that would be charged per fumigation to fumigators or SoCalGas customers of record at locations being fumigated.

SoCalGas and SDG&E have held that only utility employees are qualified to perform gas meter turn-off/turn-on services in their service territories. They sought to recover the costs of the turn-off/turn-on of gas meter service during fumigation through general rates.¹⁴ The expense would be allocated among rate classes in the next BCAP. The Utilities argued that turning service off and on is something the utility should perform and it is safety related. They cited § 328, (b), which states “no customer should have to pay separate fees for utilizing services that protect public or customer safety.”¹⁵

TURN’s position was that the utilities could have “but chose not to” train fumigator employees to perform the work, and that the utilities apparently sensed a “growth opportunity.”¹⁶ TURN argued that the turn-off/turn-on of gas service during fumigations is not a type of basic gas service defined by § 328 because the fumigation companies are not utility customers and tent fumigations are not utility services.¹⁷ TURN saw the roll-in of these costs as subsidizing the fumigation industry and recommended that the utilities charge the pest control company directly.¹⁸ TURN compared fumigation turn-off/turn-on with wrap

¹⁴ Sempra reply brief, pp. 37-38.

¹⁵ Code § 328(b).

¹⁶ TURN reply brief, p. 12.

¹⁷ TURN Reply Brief, p. 13.

¹⁸ TURN opening brief, p. 62.

and strap services on water heaters and restoring service on earthquake valves when the valve is triggered by an isolated event.¹⁹

ORA did not take issue with having the utilities perform the service and the roll-in of costs to rate base. ORA accepted SoCalGas and SDG&E's test year estimate of \$3.173 million including both the number of orders and costs. It proposed a one-way balancing account for fumigation turn-offs/turn-on.²⁰ Ratepayers would be refunded any unused funds, and any cost incurred over the maximum allowable would not be recovered from ratepayers. ORA argued for this accounting mechanism because SoCalGas has no experience with this service.²¹ There is not a sufficient reason to impose a one-way balancing account capping recovery if the estimate is too low yet require a refund if the estimate is too high. Nor do we want the utilities to refuse or discourage safe fumigation services because the number of calls exhausts a one-way balancing account limit. SoCalGas and SDG&E were presumably prepared to respond to all fumigation calls for a fixed estimate in rates and we are prepared to authorize that estimate for Test Year 2004 with the expectation that they will respond to all requests regardless of the forecast.

We consider the turn-off/turn-on of gas service in conjunction with fumigation to be a safety issue and therefore, § 328 is applicable. If an explosion were to occur while the fumigation is being performed, it impacts the safety of all adjacent customers; therefore, public safety is involved. On May 8, 2003, the

¹⁹ TURN opening brief, p. 63.

²⁰ ORA opening brief, p. 73.

²¹ *Id.*

Commission approved Resolution G-3344, which allowed SoCalGas and SDG&E to temporarily apply Z-Factor treatment to recover the cost of providing this service in its next PBR filing. The issue was to be resolved finally in this proceeding. In Resolution G-3344, we found that charging a separate fee to fumigators or customers would provide an inappropriate incentive for them to perform the turn-off/turn-on service themselves.²²

We disagree with TURN's recommendation to charge the fumigator for this service, as it might compel the fumigation companies to bypass the utilities and perform the function themselves, creating a safety issue. We reject TURN's argument that the utilities see the performance of this service as a "growth opportunity." We agree with SoCalGas and SDG&E. This is not a service ratepayers will abuse if there is no extra charge – it is not likely that customers will have their homes fumigated more often if there is no extra charge for the turnoff/turn-on service. The costs associated with fumigation will be recovered through rate base.

There is no adjustment for fumigation related calls; we will use the SoCalGas estimate as forecast in its spreadsheets and as reflected in the Joint Comparison Exhibit, ORA accepted SoCalGas' calculation.²³

B. The SDG&E Settlement

Pursuant to Rule 51.1(c) of the Commission's Rules of Practice and Procedure, the motion was filed by SDG&E, ORA, Greenlining, Coral, and CUE (collectively, the "SDG&E settling parties") addressing Phase One of the above-

²² Resolution G-3344, Finding of Fact 9.

²³ Ex. 149, SoCalGas Joint Comparison Exhibit, p. 75.

captioned SDG&E COS proceeding. As required by Rule 51.1(c), Attachment D to the SDG&E Settlement is a comparison exhibit indicating the effect of the SDG&E Settlement in relation to SDG&E's showing and to issues ORA contested. The Federal Executive Agencies (FEA) filed a late comment²⁴ in which it supported the SDG&E settlement. The Electric Generator Alliance (EGA), another non-signatory, upon review of the settlement, filed in its comments to the SDG&E Settlement that "the settlement agreements represent a fair and reasonable compromise of the issues contested in these proceedings, and EGA supports the settlements and the associated motions."²⁵ The Settlement is reproduced as Appendix H in this decision.

The immediate impact of Commission approval of the Settlement Agreement will reduce SDG&E's system average electric rates and slightly increase SDG&E's system average gas rates in 2004. Appendix A to the Settlement Agreement describes in summary of earnings format the numerical results of the agreements reached. However, we have made two adjustments to the SDG&E Settlement. We have disallowed the Otay Mesa Pressure Betterment Project and adjusted the San Onofre Nuclear Generating Station (SONGS) revenue to reflect the amount adopted in the Edison GRC proceeding, A.02-05-004, where the SONGS issue was litigated.

²⁴ On January 30, 2004, FEA filed a Motion to file late-filed comments on the SDG&E partial settlement. Its comments were limited to indicating its decision to join the settlement.

²⁵ On January 20, 2004, Electric Generation Association filed Comments to the Proposed Settlement at p. 1.

SDG&E's combined electric and gas authorized revenue requirement for 2004 will be \$957,887 million. As shown in the Settlement Comparison exhibit, SDG&E's final litigation position revenue requirement was \$1,029,746,000 (\$815,055,000 for electricity and \$214,691,000 for gas).

The Settlement Agreement provides for a 2004 revenue requirement in the amount of \$965,141,000. For Miscellaneous electric revenues, the Joint Parties agree to a forecast of \$37,122,000. This represents a compromise between SDG&E's and ORA's litigation positions.

The Settling Parties agreed to numerous adjustments to SDG&E's request; including reductions of \$2,000,000 in Electric Distribution Operating and Maintenance (O&M) Expenses. Tree trimming expenses were reduced by \$500,000, SDG&E's requested funding for New Business Construction Managers of \$174,000 was reduced; and a reduction was made of \$901,000 in O&M for the Sustainable Communities project. O&M expenses include Clearing Accounts, Nuclear Generation, Procurement, Gas Transmission, Distribution, Uncollectibles, Customer Services, Administrative & General, and Franchise Fees.

For SDG&E's gas transmission expense there is no difference; Settling Parties agree to utilize the company's forecast.

Non-settling parties filed responses to the settlements. UCAN filed an extensive opposition to the SDG&E Settlement. UCAN's position as reflected in Exhibit 608 was approximately \$47 million lower than ORA. The City of Chula Vista also filed comments opposing the SDG&E Settlement. TURN filed an opening brief as a non-settling party for SDG&E. No other party filed in opposition to the SDG&E Settlements. On April 13, 2004, SDG&E filed a motion seeking leave to file minor errata to the SDG&E partial settlement. On April 27,

2004, UCAN filed a response to this motion, and on April 29, 2004, SDG&E filed a reply. We accept the errata, and affirm the ALJ's May 12, 2004 ruling granting SDG&E's motion.

The SDG&E Settlement would resolve all issues raised by the Settling Parties regarding SDG&E's forecast TY 2004 and 2005, 2006, and 2007 electric and gas distribution revenue requirements, with two exceptions. The Settlement includes two unresolved issues for SDG&E: (1) the method of recovery of fumigation-related costs and (2) the gas resource plan with the exception of the receipt of gas at Otay Mesa.

1. San Onofre Nuclear Generating Station (SONGS) - Electric

SDG&E owns a 20% minority-interest of the San Onofre Nuclear Generating Station (SONGS) along with two other minority-interest owners, the City of Anaheim and City of Riverside. Edison is the majority-owner and the operating agent. Beginning in 1985, the Commission has litigated the O&M and capital expenditures that are billed by Southern California Edison (SCE) to SDG&E in the SCE rate proceedings for consistency and to avoid duplicate litigation.

The Settling Parties agree that SDG&E's level of electric production expense adopted in the final revenue requirement in this proceeding should reflect SDG&E's share of the actual SONGS costs the Commission authorizes in its decision in Phase 1 of the SCE GRC. For purposes of this settlement agreement, the Settling Parties have used ORA's proposed level of nuclear expense, but agree upon the determination in the final decision in Phase 1 of the SCE GRC to serve a late-filed exhibit showing SDG&E's share of the SONGS costs the Commission authorizes in A.02-05-004. With respect to the SONGS cost

that SDG&E presented in this proceeding that SCE does not directly bill to SDG&E or that were not addressed in SCE's GRC showing, the Settling Parties have agreed to use SDG&E's forecast of these costs, which total \$8 million.

SDG&E filed late-filed Exhibit Number 169 on September 2, 2004 after D.04-07-022 was approved in the SCE GRC.

SDG&E recovers most of its costs for SONGS based upon the Commission's decision in Edison's A.02-05-004. In that proceeding, SDG&E made the following request:²⁶

"In (A.02-05-004), SDG&E requests that the Commission:

- Approve SCE's forecasted SONGS costs as set forth in A.02-05-004.
- Approve \$15.806 million as SDG&E's share of SONGS 2 & 3 capital additions for 2004 and authorize SDG&E to reflect this approved amount in calculating the depreciation expense and other costs associated with these capital additions in its Test Year 2004 cost of service proceeding (A.02-12-027/A.02-12-028).
- Approve \$67.585 million as SDG&E's share of SONGS 2 & 3 O&M expenses for 2004 (other than refueling outage expenses) and authorize SDG&E to reflect this revenue requirement in rates effective January 1, 2004.
- Approve \$12.468 million as SDG&E's share of each SONGS 2 & 3 refueling outage that occurs in 2004 and 2005 and authorize SDG&E to file annual advice letters on November 1, 2003 and November 1, 2004 to specify the number of SONGS refueling outages expected to occur during the following year and the escalated cost per outage.
- Approve \$2.635 million as SDG&E's share of SONGS 1 shutdown O&M expenses for 2004 and authorize SDG&E to reflect this revenue requirement in rates effective January 1, 2004."

²⁶ D.04-07-022, mimeo., p. 60.

As a result, in D.04-07-022, the Commission identified the reasonable 2004 capital expenditures and operating and maintenance expenses for SDG&E. The Commission explained its actions as follows:²⁷

“Since SDG&E’s costs for SONGS are predicated upon its 20% ownership share, the amounts requested by SDG&E must be adjusted to reflect the corresponding 100% level of capital and O&M costs for SONGS 2 & 3 as well as the amortization period adopted in this decision. We will approve SDG&E’s requests as set forth above, subject to the adjustments required to reflect SONGS-related determinations made in this decision.”

Based on D.04-07-022, this decision includes \$27.648 million for 2004 capital expenditures and \$61.067 million for 2004 operating expenses. It should be noted that these costs were based in principle on the text of D.04-07-022, and numerically relied upon the SCE Results of Operation (RO) model for calculations of SONGS costs billed to participants by SCE. While it appears that SCE and SDG&E have an intricate system for billing of SONGS related costs pursuant to their Operating Agreement,²⁸ the costs approved in this Decision reflect not only the deductions that the Commission made in the SCE Decision, but also the costs that SCE deducted in its model to reflect billing to the other participants. This is what ultimately determines the approved revenue requirement.

²⁷ D.04-07-022, mimeo., p. 61.

²⁸ The owners of SONGS have various contractual overhead rates that SCE uses to apply to the labor and non-labor elements of SONGS related costs. These rates are detained in the “SONGS Overheads based on the Second Amended San Onofre Operating Agreement.”

2. SONGS Costs Not In Edison's Rate Case

a) New Security Requirements

On September 19, 2003, SDG&E served new testimony in Ex. 96 that added to the non-Edison costs in the proceeding the recovery of specific new requirements imposed by the Nuclear Regulatory Commission (NRC) on April 29, 2003, which was significantly after the testimony for Edison's proceeding or this proceeding was served on parties. SDG&E seeks in Ex. 96 to recover its share of the incremental costs associated with the NRC's Order Modifying Licenses adopting new security measures.²⁹ SDG&E sought recovery of \$14.469 million, as 2004 capital expenditures and \$0.76 million of O&M expenses as its 20% share of total costs.³⁰ We will not consider the 2005 O&M costs because they are beyond the test year for this proceeding.

As a threshold question, we must determine whether we can consider these costs within the scope of this proceeding. In its opening litigation brief, in footnote 124, SDG&E details that Edison entered into an agreement with parties to its proceeding to forgo reflecting the reduced Federal tax liability associated with the *Jobs and Growth Tax Relief Reconciliation Act* of May 28, 2003, in exchange for also foregoing the recovery of the new costs that result from the April 2003 NRC requirements. SDG&E argues in footnote 123:

“Per D.89-01-040 (p. B-26), the costs SDG&E seeks to recover to comply with the NRC's April 29, 2003 security orders are the

²⁹ See Ex. 96, Attachment A is the entire April 29, 2003 NRC Order and cover memo entitled “Issuance of Order Requiring Compliance With Revised Design basis treat for Operating Power Reactors.”

³⁰ Ex. 96, Table MRO-1 and MRO-2.

proper subject of update testimony. Page B-26 of D.89-01-040 permits parties to serve testimony to address ‘Known changes due to governmental action such as changes in tax rates, postage rates, or assessed valuation.’ The NRC is a governmental entity and the new security orders issued on April 29, 2003 fall clearly within the scope of this rule.”³¹

This authority to update is clearly intended to address the ministerial application of a change for an activity already known to be necessary, and in fact reflects *better facts* than were used in the original estimate. If, for example mid-way through a rate case tax rates are known to be higher or lower than were used in the initial rate filing, then either ratepayers or shareholders are protected from the effects of a bad estimate by allowing an up-date of the rate.

We find that SDG&E’s position fails under this argument for two reasons: first, it relied on a procedure for general rate cases filed in conformance with the rate case processing plan that was adopted and further modified by D.89-01-040, but A.02-12-028 is not such an application. As already discussed, for SDG&E the requirement to file a general rate case for Test Year 1999 was first suspended by D.97-12-041 and it has filed under the less rigorous conditions of a “cost of service” proceeding. The second and most compelling reason is that the new NRC requirements simply are not a “known change” that can be updated, for example, by substituting 39 cents for the current 37 cents charged for postage. These security costs are a previously unknown and new requirement that was not anticipated in SDG&E’s filing.

The decision in Edison’s application did not decide the question of whether the April 29, 2003 order by the NRC was consistent with the rate case

³¹ Sempra opening litigation brief, p. 249 (electronic version) p. 245 (mimeo.).

processing plan on September 29, 2003; Edison withdrew its July 15, 2003 motion to establish a balancing account.³² We are deciding the update question for these costs for the first time in this proceeding and we find them not to be an update within the meaning of D.89-01-040. To find totally new mandates to be merely an update could compel us to either delay major proceedings late in the schedule or to unduly rush our review of potentially significant new actions by other government bodies. We reject SDG&E's argument that these costs are includable as an update under Commission practices.

We would otherwise find that SDG&E could file a separate application to seek recovery of the new security obligations that were not anticipated and not forecast at any level of specificity in A.02-12-028. But there is an appropriate and compelling reason why we should consider the recovery of the NRC-imposed program costs now and that is our obligation to provide adequate rates for SDG&E to provide safe and reliable service. The possibility that terrorists³³ could target SONGS or any other operating reactor is cause for concern. ORA in its opening litigation brief expressed support for SDG&E's recovery of its share of these costs but pointed out that the costs have not been subject to any reasonableness review³⁴ as would occur if it had sufficient time to examine the Edison specific proposals and the NRC's subsequent approval.

³² Sempra opening brief, Footnote 124. Further, we may take judicial notice of the motion and its withdrawal in A.02-05-004.

³³ The NRC Order (Ex. 96, Att. A, p. 2) refers to "the current threat environment" and the "events of September 11, 2001." We see no reason to be coy in our decision about why we will make an exception to consider these costs at this late stage of the proceeding.

³⁴ ORA opening litigation brief, p. 189.

We find that it is in the public's interest for us to consider these costs at this time provided we also safeguard the economic interests of ratepayers.

In its reply brief, SDG&E argued that ORA had the opportunity to review these costs, five weeks from the service of Ex. 96 and the time when the witness testified. SDG&E also argued the testimony is an allowable update and not supplemental. We disagreed above with the characterization of these costs as an update. Even though ORA did not argue that it would have needed to examine the costs with Edison, and not SDG&E, we will emphasize that we want these costs reviewed before we allow final recovery; and in the middle of litigating the entire case for both SoCalGas and SDG&E, we would not have wanted a hurried review of the costs, even had ORA tried to review them. A detailed review here would have been counter to the convention that joint costs are litigated in Edison's proceeding and not in SDG&E's. Edison may have foregone its opportunity for recovery in its test year in A.02-05-004, but any ongoing capital recovery and future O&M expenses are likely to be at issue in Edison's next proceeding. The ratepayers of either company would not have been well served by a rushed review here.

SDG&E provides details of the specific capital expenditures proposed to comply with the NRC requirements in Attachment B to Ex. 96. We will allow SDG&E, subject to refund, to include the Test Year 2004 incremental revenue requirements solely for these expenditures that are beyond the scope of capital expenditures in A.02-05-004. When the Commission has its first opportunity to review the actual program costs, and provide interested parties due process, it will be in a subsequent Edison or joint Edison-SDG&E application, where any over-collection will be refunded by SDG&E to its ratepayers. What we authorize here is a one-way balancing account. We have not reviewed these costs in detail,

nor do we have in the record an indication of the NRC's approval that the proposals are adequate. We believe that making the revenue requirement subject to refund is a balance that ensures SDG&E has the revenue to fund its share of the costs as currently forecast and the ratepayers have a 2004 cap of capital expenditures \$14.469 million, and \$0.76 million of O&M expenses until there is a thorough review with due process.

SDG&E provides details of the specific incremental O&M expenses in Attachment B to Ex. 96. These too are specific costs of \$ 0.76 million in 2004 that are incremental to costs recoverable from A.02-05-004. We will allow these incremental security costs in the test year 2004 revenue requirements and require SDG&E to record these costs in a second balancing account,³⁵ subject to refund, and require supporting documentation to show that the costs are solely attributed to the new security requirements. The estimates are for 43 full-time equivalent positions and related costs; this O&M balancing account may only record these costs, for up to 43 positions, after first accounting for all positions funded in A.02-05-004. As with the capital expenditures, we are granting revenues in rates now, subject to refund at the full amount as forecast, and this balancing account with a cap is a reasonable safeguard for ratepayers in

³⁵ Balancing accounts have an associated expectation of recovery. They are accounts that have been pre-authorized by the Commission, and it is the recorded amounts – and not the creation of the accounts themselves – that the Commission reviews for reasonableness. Memorandum accounts, in contrast, are accounts in which the utilities book amounts for tracking purposes. While the utilities may later ask for recovery of the amounts in those accounts, their recovery is not a given. In this instance we approve the program, but the costs are subject to further review, so a balancing account is the appropriate mechanism.

exchange for SDG&E avoiding the requirement to incur these costs without rate relief until a later application could be litigated.

Before we will authorize final recovery of any of these costs, SDG&E³⁶ must make a clear and complete showing that (1) the recorded costs are attributable solely to new security activities and investments that are required by the April 29, 2003 NRC orders; (2) the recorded costs are truly incremental, i.e., they are not included in this Phase 1 decision; (3) if any current (i.e., included in this proceeding) security activities or planned investments are supplanted by compliance with the new NRC requirements, so that costs for those activities and investments are reduced, such cost reductions are properly accounted for; (4) the costs must be incurred by SDG&E and the other plant owners, and not by taxpayers; and (5) the recorded costs are otherwise reasonable. The balancing accounts as authorized in this decision in no way reduce SDG&E's burden of proof to justify the reasonableness of recovering these costs.

b) Other Costs Not Billed by Edison

SDG&E sought recovery of \$2.0 million for three items in this application of SONGS costs that are not in the Edison case.³⁷ These costs were unopposed, except for one by UCAN, and are adopted as proposed by SDG&E; they are discussed solely to clarify and distinguish them from the security costs above and the much larger costs that we imported from A.02-05-004 in D.04-07-022.

³⁶ As with most other SONGS costs, this review may be in an Edison proceeding, except for any costs unique to SDG&E that should be addressed in SDG&E's next appropriate rate case.

³⁷ All three items are described in Ex. 38 and Ex. 38-E, pp. MRO-5 through MRO-6.

SDG&E sought to recover costs allocated to it for the Department of Energy's decontamination and decommissioning of uranium enrichment plants. Title XI of the Energy Policy Act of 1992 created a fund for this purpose and SDG&E's 2004 share for its 20% interest in SONGS is \$1.166 million. No party disputed this amount.

The second item was \$0.807 million in 2004 for SDG&E's share of the cost to store spent fuel (used and no longer useful) from SONGS Unit 1. UCAN argued that 100% of the capital cost of spent fuel storage should be disallowed, because this project was part of the capital spending specifically requested in the Incremental Cost Incentive Proceeding (ICIP) and it was deferred past the ICIP period in large part as a result of ratepayer-funded decommissioning spending at SONGS 1.³⁸ It is not clear that UCAN is targeting this \$0.8 million; its comments refer to its positions in A.02-05-004 on fuel storage. We defer to A.02-05-004 for all costs in that proceeding and to the extent we are looking at unique and separate fuel storage costs here, we conclude that SDG&E is seeking current operating costs for storage and these are not the same costs that concerned UCAN in A.02-05-004. We find the \$0.8 million in 2004 for SONGS Unit 1 spent fuel storage to be a reasonable test year expense.

The final cost is the \$0.020 million (\$20,147 to be precise) annual payment to the Department of the Navy for its share for a site easement on Camp Pendleton, where SONGS is located. This cost is reasonable and is adopted.

³⁸ Opening brief – UCAN, p. 300.

Finally, SDG&E requested \$5 million³⁹ in other costs, for depreciation, taxes and franchise fees, nuclear insurance, uncollectables and rate of return. These are addressed elsewhere and included in the appropriate accounts. Depreciation and return are calculated based upon inclusion of the capital additions from D.04-07-022 to SDG&E's existing plant accounts in the adopted results of operations. Insurance is addressed in administrative and general expenses and the remainder are included in the results of operations in the appropriate accounts.

3. Administrative and General (A&G) Expense

The Settling Parties agree to A&G expense of \$122,307,000 (\$86,387,000 for electricity and \$35,920,000 for gas). The Settlement thus reflects approximately \$37 million less than SDG&E's end of hearing litigation position. Only 50% of SDG&E's forecast for costs associated with the incentive compensation plan, the long-term incentive compensation plan and spot cash awards is included in the Settlement. This represents a reduction of \$18.086 million.

The Settlement also reflects a decrease in Directors and Officers' liability insurance of \$1.055 million, a \$0.4 million decrease in Regional Public Affairs funding, a 50% decrease in funding for supplemental pensions (for a reduction of \$277,000) and reductions in other benefits as described below. For Medical, Dental and Vision benefits, SDG&E's updated estimates are adopted in the Settlement, subject to a \$2.2 million generic adjustment for reduced workforce projections. Other benefits are subject to a \$1.74 million adjustment to reflect parties' concerns regarding the appropriateness of including in rates certain

³⁹ Ex. 38 and Ex. 38-E.

benefits such as executive life insurance. The Settlement therefore reflects litigation risks, but also protects against some of SDG&E's major concerns, such as pension contribution requirements and medical cost increase. SDG&E will have a two way balancing account that allows SDG&E to recover minimum-required pension contributions.⁴⁰

4. Fumigation Related Costs

As we have determined previously in the discussion regarding SoCalGas fumigation related costs, we consider the turn-off/turn-on of gas service in conjunction with fumigation to be a safety issue and therefore, § 328 (b), which states “no customer should have to pay separate fees for utilizing services that protect public or customer safety” is applicable. As we previously stated, we expect SoCalGas and SDG&E to respond to all fumigation calls. We adopt SDG&E's estimates for fumigation related expense which will be recovered through base rates.

5. Electric Distribution

The Settling Parties agree to Electric Distribution expense of \$79,319,000. Reductions were made for several items, including: growth-related reduction to tree-trimming expense; elimination of SDG&E's requested funding for New Business Construction Managers; and a reduction in O&M expense for SDG&E's Sustainable Communities project.

⁴⁰ This is subject to one exception: if the minimum-required contribution in any year exceeds the estimate for that year that SDG&E provided in its testimony, shareholders will have to pay 20% of the excess.

a) Vegetation Management

D.98-12-038 (83 CPUC 2d, 363) established a one-way balancing account (under-spending is refunded but over-spending is absorbed by SDG&E) in part because it was an unresolved item. During the proceeding, SDG&E proposed to end the balancing account and argued that it has made a myriad of improvements, whereas, ORA proposed retaining the balancing account.

The Settling Parties agree that no balancing account will be utilized for tree trimming or vegetation management expenses, and adopt SDG&E's forecast in Account 593, and in sub-account 593.2, less a reduction in that sub-account of \$500,000 (an adjustment for growth related trims).

By Resolution E-3824, SDG&E and other utilities were directed to respond to then Governor Davis' March 7, 2003 Emergency Proclamation to deal with the impacts of the pine bark beetle infestation. SDG&E cites this as an example of how even after the company filed its application and Ex. 27, "SDG&E anticipates the level of these "risk" trees to be far greater than originally determined, exceeding \$3 million in 2003 alone."⁴¹ Resolution E-3824 does allow SDG&E to utilize a catastrophic event memorandum account for Bark Beetles, so there is a vehicle for recovering all reasonable actual costs.

Vegetation management is a major expense; it is a major expense subject to significant potential crises: fire, flood, pests and drought. Account 593 is a reasonable compromise of the parties' litigation positions, but we are reluctant to eliminate the balancing account treatment for such a volatile program. We

⁴¹ Ex. 75, p. DLG-45.

adopt the figures proposed in the settlement, subject to the continued usage of the one-way balancing account, for vegetation management in Test Year 2004.

b) Sustainable Community Energy Systems

The Sustainable Community Energy Systems is a proposed SDG&E project that would provide funds for the engineering, design, materials, installation, testing, and maintenance of community-based energy strategies, state-of-the-art generation and storage technologies, and advances control devices.

The Settling Parties agree to a reduction in SDG&E's forecast of Account 594 costs of \$901,000 in O&M for the Sustainable Communities Project. This O&M reduction is consistent with the Settling Parties recommendation to fund \$4.3 million of the SDG&E requested capital for the Sustainable Communities Project.

UCAN expressed concern at the size of the funding request in light of the limited details of the program. It pointed to the lack of any process for "stakeholder" input into the SDG&E program, and argued that SDG&E should explore options for external management by an entity such as the San Diego Regional Energy Office.

We share UCAN's concerns with the current proposal, but find the primary objectives of the program admirable. They include ensuring environmentally sensitive energy solutions, stimulating the distributed generation industry, supporting and partnering with interested developers, and promoting energy and demand savings.

We adopt the proposal in the settlement, but encourage SDG&E in future cost of service or general rate cast proceedings to pursue the refinement of its proposal and to present future proposals in greater detail - the projects that will be pursued, detailed criteria that the company would consistently apply in

choosing and serving projects. While we are grateful for SDG&E's interest in pursuing its stated goals, in the future, we need greater assurance that the efforts will serve the interests of all SDG&E ratepayers, and of the broader San Diego community.

6. Otay Mesa Pressure Betterment Project

Although the Settlement left SDG&E's gas resource plan unresolved, it committed to placing the Otay Mesa Pressure Betterment Project in service by December 31, 2004, subject to matters beyond SDG&E's control. In this decision, the Commission disallows any revenue associated with this project.

The Otay Mesa Pressure Betterment Project 2466 would modify SDG&E's gas transmission system to allow multi-directional flow through the Otay Mesa Metering Station (Otay Mesa);⁴² that means gas could alternatively flow northward from the Mexico and U.S. border into the SDG&E system interconnecting with TGN.⁴³ SDG&E proposed to add \$11.531 million to rate base (\$3.763 million in 2003 capital expenditures and \$ 7.768 million in 2004⁴⁴). ORA did not take issue with the concept of the project, but it did object that until SDG&E has a contract with a gas supplier and approvals from both the Federal Energy Regulatory Commission and the U.S. Department of Energy, the project should not be included in rate base.⁴⁵

⁴² This gas transmission system should be distinguished from the Otay Mesa generation project, which this Commission recently addressed in D.04-06-011, in R.01-10-024. See decision mimeo., p. 53, ff.

⁴³ Ex. 29, p. MDM-20

⁴⁴ Ex. 93, p. MDM-3.

⁴⁵ Ex. 302, p. 23-4.

SDG&E responded in its rebuttal testimony, Ex. 93, that the project was delayed, and the costs shifted between 2003 and 2004 still are the same total, and that the rate base addition should be weighted to reflect a July 1 in-service date in 2004. SDG&E did not clarify in Ex. 29, 55, or 93 that TGN is *Transportadora de Gas Natural*, which is an affiliated company, owned by SDG&E's parent Sempra Energy.⁴⁶ TGN is the interconnecting company with SDG&E on the Mexico-U.S. border.

In Ex. 55, supplemental testimony served on June 16, 2003, in response to the Scoping Memo, SDG&E explained the role of the Otay Mesa project as follows:

“Although SDG&E can meet its long-term demand growth with the resource plan presented (in Ex. 55), there may be a need for additional infrastructure to accept new supply into the SDG&E system. In the long term, new gas resources may become available from an LNG plant sited in Baja, California, Mexico. SDG&E could use the reliability receipt point at Otay Mesa discussed in (Ex. 29) to take new supplies into the SDG&E system. In the event that this potential supply source develops, SDG&E will need to modify and expand its gas transmission system...” by a forecast of a further \$232 million.⁴⁷ (Emphasis added.)

Additionally, ORA proposed an Over Budgeting Factor adjustment that appears to be derived in the same fashion as the Budget Reduction Factor for gas

⁴⁶ See: Section A: Organizational Structure, Chart B-2, *2002 Annual Affiliate Transaction Report, SDG&E*, transmittal dated April 29, 2003 shows that Sempra owns 67% of *Transportadora de Gas Natural de Baja California*. This report is filed annual with the Energy Division in compliance with D.93-02-019.

⁴⁷ Ex. 55, pp. DMB-4 and DMB-5.

distribution projects. ORA did a mathematical exercise to average the 1997 – 2002 six-year variance in budget to actual after dropping the highest and lowest. The range is 39.6% to 1.6% and even then the range is from 18.9% to 4.1% for the remaining four data points for an average of 9.7%.⁴⁸ We do not know from ORA's exhibit, for example, whether every project was always under budget or whether this is a net figure. We also do not know whether managers were over-estimating costs in order to avoid overruns, in essence, looking good by beating an easy target. SDG&E's last rate setting procedure for capital expenditures was for a 1997 test year, so none of the intervening years' budgets relied on by ORA were prepared to withstand the scrutiny of a rate proceeding at the Commission.

The Settlement explicitly includes the Otay Mesa Pressure Betterment Project in capital additions authorized in rate base, within the total revenue requirement amount authorized by the Settlement.

On September 2, 2004, the Commission signed D.04-09-022 which authorized SoCalGas and SDG&E to establish receipt points, as needed, at Otay Mesa, Salt Works Station, Center Road Station, or at other receipt points that may be needed to access regasified Liquefied Natural Gas (LNG). SDG&E and SoCalGas were authorized to establish the Otay Mesa receipt point as a joint receipt point into both of their systems, and the interim transportation rate for a shipper delivering gas through Otay Mesa shall consist of the shipper's transportation rate on its local utility, *i.e.*, either the applicable SDG&E or SoCalGas tariff rate.

⁴⁸ Ex. 302, p. 23-3.

It is presumed that LNG suppliers will pay the actual system infrastructure costs associated with their projects. Decision 04-09-022 allows LNG suppliers to make application to the Commission to roll costs of system enhancements required for LNG transportation into rate base after the project is complete.

We decline to adopt the Otay Mesa Pressure Betterment Project as part of the capital additions in the Settlement at this time.

7. Gain on Sale of Blythe Property

In 2001, SDG&E sold property for a before tax gain of \$22 million that at one time had been accounted for in Plant Held for Future Use, which is a rate base account. This land was acquired in 1975 for the Sundesert Nuclear Generating Station, a facility that was never constructed. There is a long history of the proposed plant, its subsequent abandonment and the ratemaking treatment for many of its costs. Some site-related costs were amortized (recovered) in rates and the balance was in rate base for Future Use until 1984 when a portion of the remaining balance was also amortized and a residual amount, \$19.5 million, was removed from rate base. ORA summarized this as “ratepayers have paid: (1) the \$45 million of non-site-related costs pursuant to D.90405, (2) the \$25.5 million of site-related costs amortized pursuant to D.84-04-041, and (3) a return on a ratebase of \$45 million for the period 1979-1984.”⁴⁹ ORA proposed that the gain should be re-allocated (more to ratepayers) and amortized as Miscellaneous Revenues over five-years. ORA

⁴⁹ Ex. 300, pp. 2-3 and 2-3; and ORA’s opening litigation brief, pp. 258-260.

re-weighted the allocation based on what it termed “risk exposure.” (Ex. 300, p. 2-4.)

SDG&E sold the property in 2001 and allocated the gain between ratepayers and shareholders in proportion to the time the property was in rate base (June 1979 to April 1984) and the time that it was not (April 1984 to November 2001). SDG&E recorded the ratepayer share, as calculated by its method, in its Transition Cost Balancing Account.⁵⁰ SDG&E cited D.83-12-065 as apposite; it dealt with a property that was a potential power plant site and the Commission allocated a subsequent gain on a shared basis of the time the property was included and then excluded from rate base.⁵¹

The Settlement Agreement represents a compromise between SDG&E’s and ORA’s litigation positions regarding the allocation of gain on sale from the Blythe Sundesert site, rather than an agreement to either party’s position. The Commission has recently opened Order Instituting Rulemaking 04-09-003 to consider policies and guidelines regarding the allocation of gains from sales. This Settlement Agreement, as with all settlements, is not binding precedent for any future proceeding.

C. The Greenlining Institute and SoCalGas and SDG&E Side-Settlement Agreement

SoCalGas and SDG&E included in the partial settlements an additional agreement with Greenlining addressing Workforce Diversity, Supplier Diversity,

⁵⁰ Sempra opening litigation brief, pp. 315-318, and Ex. 104.

⁵¹ Ex. 104, p. LS-1 and fn. 1.

and Philanthropy.⁵² Greenlining and the applicants are the only parties to the agreements. The agreements between the utilities and Greenlining make four commitments on work force diversity, supplier diversity, philanthropy and annual meetings. Appendix I to this decision incorporates the Greenlining/Sempra Settlement Agreement.

i. Workforce Diversity

Under the terms of the proposed settlement, SoCalGas and SDG&E would provide to Greenlining workforce diversity data in the same format as provided to *Fortune Magazine* for its annual diversity survey, unless the Commission mandates a similar format for reporting to the Commission. SoCalGas and SDG&E would make “their very best good faith efforts to be in the top ten ‘Best Companies for Minorities’” as measured by *Fortune Magazine* and to be a leader among California Utilities.

ii. Supplier Diversity

Greenlining wanted 25% of SoCalGas and SDG&E’s suppliers to be minority businesses. SoCalGas and SDG&E made no specific commitment in the proposed settlements to Greenlining other than to “continue to discuss the viability of this objective” and to comply with the existing obligations of General Order (GO) 156.⁵³

⁵² Attachment C to both proposed Settlement Agreements.

⁵³ GO 156: Rules Governing the Development of Programs to Increase Participation of Women, Minority and Disabled Veteran Business Enterprises in Procurement of Contracts from Utilities as Required by Pub. Util. Code §§ 8282 - 8286.

iii. Philanthropy

Greenlining proposed in testimony⁵⁴ that SoCalGas and SDG&E should be ordered by the Commission to make philanthropic contributions equal to either the compensation of the “top ten executives” or 2% of pre-tax earnings, and further, 80% of the contributions should be “allocated to the needy.” Under the Settlement Agreement, the Utilities reaffirm their commitment to improve upon their outreach efforts to racial and ethnic minority groups, including low income and underserved communities and to improve upon philanthropic stewardship within each utilities’ communities. Additionally, Sempra agrees to provide Greenlining with a detailed reporting of philanthropy with a description of each relevant organization and the total charitable contribution amounts.

iv. Annual Meetings

SoCalGas and SDG&E committed in the proposed settlement with Greenlining that the chief executive officer of both companies “and/or” the president, and Sempra’s senior vice president of human resources will attend an annual meeting with Greenlining to discuss workforce diversity, supplier diversity and philanthropy.

v. Discussion

We applaud the companies’ commitment to improve workforce diversity, supplier diversity and philanthropy. In D.04-07-022, SCE’s GRC, with respect to philanthropy, we acknowledged that the Commission has no jurisdiction to order changes to a utilities giving practices and found philanthropy generally to

⁵⁴ Exhibit 900, Updated Testimony of John C. Gamboa, pp. 11-12.

be beyond the scope of the Commission's ratemaking authority.⁵⁵ We affirm the determinations made in the Edison GRC again here.

Any contributions for any social, political or corporate image-enhancement purposes are made with "shareholder money," that is the earnings that are discretionarily available to the companies to pay dividends or use for other non-utility investments. The only commitment of shareholder earnings enforced by the Commission is the overarching requirement that the shareholders maintain sufficient invested capital to sustain the authorized capital structure of the company to finance its used and useful plant and equipment necessary to serve the ratepayers. We have no authority to enforce ratepayer funding of philanthropy and reject the use of ratepayer funds for philanthropic purposes to eliminate ratepayer funding of donations for any purpose no matter how socially worthwhile.

However, unlike in the Edison GRC proceeding, here the Settlement Agreement does not ask the Commission to link executive compensation with philanthropy. As such, we find no reason why we cannot endorse the settlement as agreed upon by Sempra and Greenlining⁵⁶. We take this opportunity to commend the companies for working to improve in areas over which this Commission has no jurisdiction through partnerships and collaboration with groups and organizations. With that understanding, we endorse the

⁵⁵ See the assigned ALJ's *Ruling Denying the Motion of The Greenlining Institute and Latino Issues Forum to Compel Responses to Outstanding Data Requests*, dated July 18, 2003. Ruling: "3. Shareholder financed philanthropy is not within the scope of these proceedings."

⁵⁶ Appendix G of this decision incorporates the Sempra/Greenlining Settlement Agreement.

Sempra/Greenlining Agreement as a Side Settlement Agreement, separate from the SoCalGas and SDG&E Settlement. We include it in Appendix I to this decision.

VIII. Conclusion

The principal public interest in this proceeding is the delivery of safe, reliable, utility service at just and reasonable rates. After careful review and subject to the modification discussed in this decision, we are convinced that the Settlements balance the various interests at stake, resulting in a fair and reasonable TY 2004 revenue requirement, such that we can find SoCalGas' and SDG&E's rates to be just and reasonable. Pursuant to Rule 51.1(e) we reach this conclusion only after finding that the Settlements, taken together, are reasonable in light of the whole record, consistent with the law, and in the public interest.

A. Reasonable in Light of the Whole Record

We find that the Settlements are reasonable in light of the whole record for two reasons. First, while the SDG&E Settlement is not an all-party settlement, both settlements are supported by parties representing all various affected interests in this proceeding. Both settlements represent a fair and reasonable compromise of the issues. The following parties support both the SoCalGas and SDG&E settlements.

ORA, whose charge is to represent ratepayer interests, was an active participant in the proceeding and supports the Settlements. ORA filed complete, detailed testimony consisting of an account-by-account review of SoCalGas' and SDG&E's TY 2004 revenue requirement forecast. TURN was an active participant in the proceeding and supported the SoCalGas Settlement. TURN served testimony on a broad range of consumer issues. Utility Workers Union of

America, AFL-CIO (UWUA), and Local 483 served testimony addressing issues of concern to represented employees. SCGC's testimony addressed issues related to SoCalGas' GIR implementation costs and resource planning issues. Greenlining served testimony on supplier diversity, philanthropy and executive compensation.

Since the Settling Parties filed their motion for adoption of these settlements, two other parties have come to realize the merits of this settlement and now support them. The Federal Executive Agencies filed late comments supporting the SDG&E settlement. The Electric Generator Alliance also filed in its comments that "the settlement agreements represent a fair and reasonable compromise of the issues contested in these proceedings, and EGA supports the settlements and the associated motions."

Two parties filed comments opposing the SDG&E settlements. UCAN opposed the Settlement for SDG&E in its comments on the proposed settlement. UCAN objected that the partial settlement increases SDG&E's distribution revenues by 27.3% over its 2001-recorded costs that, according to UCAN, equates to an annual increase in electric operations costs of almost 7%. The City of Chula Vista was an active participant in the proceeding, but did not sponsor expert testimony. The City believes that its residents and businesses need relief from the high energy prices since 2000.

We have considered UCAN's and the City's comments and the responses of the settling parties, and other relevant factors as we reviewed both the litigated positions of the parties and the justifications that are included in the settlements. The parties' negotiations were informed by a thorough record consisting of over 600 exhibits and 20 days of evidentiary hearings. Consequently, the Settling Parties had ample opportunity to test the positions of

opposing parties through discovery and cross-examination. In addition, the positions presented generally represented strongly held, well-supported opinions of experienced witnesses who are familiar with this Commission's processes. Taking the two settlements together with all appendices, the parties have provided 415 pages of detailed description of the settlements' terms representing ten days of settlement negotiations.⁵⁷ Typically, the Settlements are reached after opposing parties are able to assess the strengths and weaknesses of their respective cases. When parties with opposing interests agree to a settlement, it may be one indication of the reasonableness of the settlement. The revenue requirements adopted by the Settlement are within the range of positions taken by the parties.

UCAN argues that the settlement does not contain enough detail to allow the Commission to evaluate it. We do not agree, nor do we find this reason enough to justify rejection of the settlements. Attachments D to each of the settlements is a revised version of the full comparison exhibits⁵⁸ that show not only the parties positions on all the issues in dispute by FERC account, but also how the settlements resolve each such issue. In some cases, the settlements resolve each individual issue; in other cases, the settlements resolve a few disputed issues within a single FERC account on a consolidated basis.

UCAN also argues that the settlement is not representative "of active parties" in this proceeding. Ratepayer interests are reflected in the settlement

⁵⁷ The SDG&E settlement contains 24 pages in the main section and 199 pages in its Attachment D. The SoCalGas settlement has 28 pages in the main section and 162 pages in its Attachment D.

⁵⁸ Ex. 149 and 150

due to ORA's participation in the settlement, and FEA's support for the settlement. UCAN does not identify what stakeholders' interest it represents different than ORA or FEA.

The City of Chula Vista did not conduct discovery, did not file testimony, did not participate in cross-examination, and ultimately did not present a position in its comments significantly different than UCAN's. Though we sympathize with the ratepayers of Chula Vista, we cannot reduce a utilities' revenue requirement simply to allow ratepayers to have a reduction in rates.

The critical issue in these proceedings is to ensure that the companies receive a reasonable level of revenue for monopoly distribution services that will in turn assure customers of safe, reliable and responsive service under conditions of prudent management, while assuring the companies' ability to earn an authorized rate of return, again assuming prudent and effective management. We do not intend to place safety, reliability or the responsiveness of the companies' service at risk through under funding activities, programs and service.

We find that the revenue requirements contemplated by the Settlements with the exceptions we have noted, are justified by the parties' showing and are in the interest of SoCalGas' and SDG&E's ratepayers and the public.

C. Consistent with the Law

The Settling Parties assert that the Settlement Agreement is fully consistent with applicable law. We agree. We are not aware of any policy, rule or order that would be contravened by the Settlements.

D. In the Public Interest

Finally, we find that the Settlements are in the public interest. Like many settlements, they are the result of compromises to accommodate and balance the

interests of all the parties and the public. We find that Settling Parties have compromised their litigation positions and have arrived at a reasonable result in light of the extensive record.

Just as we acknowledged in D.04-05-055, settlement by nature are to a certain extent a “black box,” we are however satisfied that the Settling Parties presented thorough detailed Settlement Agreements. The Settlements would adopt total amounts for general categories rather than adopting a detailed forecast for each specific account. The Settling Parties maintain that this high level agreement does not imply any specific resolution of issues at a detailed level, with the exception of those issues specifically discussed in the Settlements. We are willing to take a step back and approve forecasts for general categories, but in doing so, we must acknowledge that there are downstream consequences associated with adopting this type of “black box” approach.

For example, in SoCalGas’ and SDG&E’s next GRCs, parties will not be able to ascertain the specific amounts adopted for certain accounts, or compare recorded amounts to the corresponding “adopted” forecast with the same degree of precision we typically expect. We do not view this as an insurmountable problem, given the fact that under forecast test year ratemaking a utility is generally neither obligated to spend the authorized amount nor limited to spending only the authorized amount. A fundamental tenet of forecast test year ratemaking is that the utility retains the discretion between the test years to manage its revenues and activities as it sees fit, consistent with its obligations to provide safe, reliable, environmentally sound utility service. Although we review the utility’s request on an account-by-account basis, for the most part, the ratemaking adjustments we make to SoCalGas’ and SDG&E’s budgets are not binding.

We caution the utilities that our approval of a “high level” forecast in this Cost of Service Proceeding should not be interpreted to mean that there is any doubt regarding whether or not SoCalGas and SDG&E was authorized funding to accomplish the various objectives set forth in their application. An essential factor in our finding that the Settlements are in the public interest is the understanding that, by virtue of its agreement to the TY 2004 revenue requirement provided in the Settlements, SoCalGas and SDG&E intends to fulfill the objectives stated in their Cost of Service request. We also continue to expect the utilities to maintain their systems according to applicable standards set by the Commission’s numerous General Orders.

The Settling Parties confirm our understanding in the Motions to Approve the Settlements. In both SoCalGas and SDG&E’s motions to adopt the Settlement Agreements, the Settling Parties state that the Settlement Agreements will allow the utilities to provide a reasonable level of service, based upon historical spending, trends, customer and system growth, and other cost drivers.

Absent this type of commitment, we would be unable to find that the Settlements are in the public interest. In adopting the Settlements, we make it abundantly clear that both SoCalGas and SDG&E is expected to continue meet all of its service obligations and maintain and upgrade its system in a manner consistent with its TY 2004 forecast. By providing SoCalGas and SDG&E with the discretion to spend the authorized revenue requirement as it sees fit, we are not authorizing the utilities to defer maintenance, cancel proposed upgrades or service improvements, or reduce staffing in a manner inconsistent with the objectives identified in its request. In future GRCs, we will not entertain claims that the adopted revenue requirement somehow forced SoCalGas and SDG&E to do otherwise.

IX. Additional Issues Identified in the Scoping Memo

As a part of I.03-03-016 that is consolidated with these applications, the Assigned Commissioner Carl Wood directed SoCalGas and SDG&E other parties to present testimony on several issues. The Scoping Memo dated April 2, 2003 specifically directed the parties to address a number of questions that elaborated on the nexus between the cost and service quality in the context of a renewed commitment to cost of service regulation. The Scoping Memo, as a procedural device for shaping the issues in a Commission proceeding, was made a part of the Commission's practice in rate proceedings by Chapter 856 of Stats. 1996 (SB 960 (Leonard)) which added Pub. Util. Code § 1701.1⁵⁹ and 1701.5.⁶⁰

⁵⁹ Section 1701.1 provides in pertinent part:

(b) The commission upon initiating a hearing shall assign one or more commissioners to oversee the case and an administrative law judge where appropriate. The assigned commissioner shall schedule a prehearing conference. The assigned commissioner shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered and the applicable timetable for resolution.

⁶⁰ Section 1701.5 provides in pertinent part:

1701.5. (a) Except as specified in subdivision (b), in a ratesetting or quasi-legislative case, the commission shall resolve the issues raised in the scoping memo within 18 months of the date the scoping memo is issued, unless the commission makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline. No single

Footnote continued on next page

These provisions enable the parties and the assigned commissioner to shape the issues proactively and not be passive recipients of an agenda shaped solely by a utility-initiated application submitted months in advance pursuant to the Rate Case Plan. The statute clearly states that the issues identified in the scoping memo must be addressed. They are not optional or peripheral.

It is apparent from the Settlements that in a forum primarily focused on adopting a reasonable test year revenue requirement the parties are most interested in addressing immediate rate impacts and not taking a longer-term view as intended by the directives of the scoping memo. Regrettably, the parties did not explicitly address all of these issues.

California energy utility regulation is in a difficult transitional stage following the breakdown of the wholesale electricity market in 2000 and 2001, and it is important to engage in dialogues, such as were proposed in the Scoping Memo, in order to ensure that future regulation is informed by the views and expertise of all stakeholders. We are disappointed in the lack of participation shown by the parties on these items. In the following discussion, we will however briefly review and comment on them.

1. Investment Planning

The objective of the investment planning process was “to determine how SDG&E is, and how it should be, positioning itself to resume provision of fully integrated electric utility service.” Parties were also asked to “submit proposals

order may extend the deadline for more than 60 days.

on how the Commission should structure and oversee SoCalGas and SDG&E's investment planning process.”⁶¹

Investment planning was adequately examined in the course of developing capital expenditure forecasts for plant additions, and also by the review of the shared services for strategic planning. We are satisfied that the review of the test year was adequate to allow us to adopt reasonable test year capital investment estimates.

2. Safety and Reliability

The Scoping Memo requested “an examination of SoCalGas and SDG&E's safety, reliability, and maintenance standards and performance.” Parties were also asked to “propose an appropriate level of maintenance expenditures, including recommendations for parts of the two natural gas systems, and SDG&E's electric system.”⁶²

Safety and reliability was addressed in course of developing reasonable test year forecasts of the appropriate expense accounts, and in Phase Two, we consider past safety and reliability measurements in our review of the applicants' proposed safety and reliability incentive measures.

3. Customer Service

Parties were also asked to “evaluate current PBR customer satisfaction standards, compare SoCalGas and SDG&E's standards to those of other utilities, and make recommendations on new standards and performance measures.” And also “assess the effectiveness of SoCalGas and SDG&E's billing system,

⁶¹ Scoping Memo, p. 3.

⁶² Scoping Memo, p. 4.

website, and call center to meet customer needs, including web-based contacts and responses, 800 telephone numbers, call management systems, and voice mail.”⁶³

Customer Service expenses were addressed in the development of the test year revenue requirement and they are also the subject of the Phase Two review of specific applicant proposals for customer service incentives and monitoring.

4. Utility Operations

Parties were asked “to develop a consistent overall policy for how SoCalGas and SDG&E undertake their operations ... to examine the decision-making processes the utilities use to determine how to provide safe and reliable service to customers at a reasonable cost. ... to conduct a review of SoCalGas and SDG&E’s land-use and land management practices, especially with respect to environmental impacts, use of utility lands for unregulated activities by SoCalGas and SDG&E, their affiliates, or third parties, and incidental benefits to ratepayers and the community at large.”⁶⁴

Utility Operations were addressed in the development of the test year revenue requirements, but were not scrutinized in a more holistic approach to examine how SoCalGas and SDG&E are managed. SoCalGas and SDG&E filed brief supplemental testimony on their land management practices that are general in nature and do not cite to specific management practices, written policies or practices or designates who has primary management responsibility

⁶³ Scoping Memo, p. 5.

⁶⁴ Scoping Memo, pp. 5-6.

for land-use management.⁶⁵ SoCalGas stated that it has “secured programmatic state and federal permits over two thirds of its service territory” that establish protective and conservation measures SoCalGas will undertake during its daily operations. In the testimony, SoCalGas stated further that it was in the process of obtaining a final programmatic permit for the remainder of its lands.⁶⁶

SDG&E stated that in 1995 the company prepared the *SDG&E Subregional Natural Community Conservation Plan*, that is a 50-year plan, and there are additional protections limiting the company’s use of its land.⁶⁷

5. Diversity, Outreach, Contributions, and Minority Contracting

Consistent with the February 13, 2003 Scoping Memo for A.02-11-017, the utilities were asked to serve supplemental testimony regarding its workforce diversity over the last 10 years, as well as present and future plans regarding workforce diversity. Diversity, Outreach, Contributions, and Minority Contracting where “matters within the scope⁶⁸ of R.03-03-035 were excluded from the scope of these consolidated proceedings. Any other WMDVBE issues beyond the scope of R.03-02-035 may be pursued to the extent they are relevant

⁶⁵ Ex. 53 and 56, are both about six pages long, and share much identical text, which is consistent with the centralization of utility management in the Corporate Center.

⁶⁶ Ex. 53, p. RAK-5.

⁶⁷ Ex. 55, pp. RAK-4 and 5.

⁶⁸ “By this order, we grant the Petition of the Greenlining Institute and Latino Issues Forum (Greenlining/LIF) to institute a rulemaking to amend General Order (GO) 156. We institute this rulemaking to eliminate the exclusions currently permitted under GO 156, and to refine certain aspects of GO 156 verification and reporting.” (R.03-02-035, dated February 27, 2003, mimeo., p. 1.)

to the 2004 test year revenue requirement.” And to “address GO 77K related issues to the extent they are relevant to the 2004 test year revenue requirement.”⁶⁹

Diversity, Outreach, Contributions, and Minority Contracting were narrowly reviewed within the constraints of adopting a test year revenue requirement.

6. Gas Resource Plans

This issue was not settled in either the SDG&E or SoCalGas Settlement. The Clarification to the Scoping Memo required SoCalGas and SDG&E “to supplement their testimony ... as defined in D.02-11-073. ... and the applicants must further supplement their cases to demonstrate that their systems are adequate and they are positioned to comply with the recently adopted reliability standards.”⁷⁰

SoCalGas and SDG&E served three exhibits (Exs. 52, 54 and 55) that provided supplemental testimony on their resource plans.

With respect to gas system planning for both companies the supplemental testimony was insufficient to reasonably inform us as a part of adopting the projected test year capital expenditures and the operating expenses to support planning and oversight of the gas systems. In D.04-05-039, the Commission dismissed without prejudice the pending Biennial Cost Allocation Proceedings for SoCalGas and SDG&E, A.03-09-008 and A.03-09-031, in part because of the stay on the Gas Industry Restructuring pending Commission adoption of an order in Phase One of R.04-01-025. We therefore will defer the gas resource

⁶⁹ Scoping Memo, pp. 6-7.

⁷⁰ Scoping Memo, pp. 8-9.

plans to the next appropriate proceeding – the next filed SoCalGas and SDG&E BCAP.

X. Comments on Alternate Proposed Decision

The alternate proposed decision of Commissioner Geoffrey F. Brown in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

XI. Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Douglas Long is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. As in any ratesetting proceeding, the Commission's primary task is to forecast reasonable revenue requirements for the test period, i.e., the amounts of revenues needed by SoCalGas and SDG&E to provide safe and reliable public utility service and earn a reasonable rate of return for 2004 under conditions of prudent management.
2. On December 19, 2003, after conclusion of evidentiary hearings, SoCalGas, ORA, TURN, UWUA, Local 483, SCGC, and Greenlining filed a joint motion for a Settlement Agreement resolving disputed issues related to SoCalGas' TY 2004 gas revenue requirement request.
3. On December 19, 2003, SDG&E, ORA, Greenlining, Coral, and CUE filed a joint motion for a Settlement Agreement resolving disputed issues related to SDG&E's forecast TY 2004 electric and gas distribution requirements.
4. On January 20, 2004, UCAN and the City of Chula Vista filed comments in opposition to the SDG&E settlement.

5. On January 30, 2004, FEA, a non-signatory, filed late-filed comments supporting the SDG&E settlement.
6. On January 20, EGA, another non-signatory, filed comments supporting the SDG&E settlement.
7. The Settlements resolve all issues with two exceptions: (1) the method of recovery of fumigation related costs and (2) the gas resource plan.
8. These applications were not filed in conformance with the rate case processing plan; they were filed in compliance with D.97-12-041 (77 CPUC 2d, 139) that allowed SoCalGas and SDG&E to file a “cost of service” application.
9. In the settlements, the parties agree that SoCalGas and SDG&E will file a NOI as a part of the next cost of service or GRC application, in a manner and on a schedule consistent with the provisions of the rate case plan adopted in D.89-01-040.
10. ORA, TURN and UCAN did not have an opportunity under the process for these applications to review a NOI of the applications for deficiencies.
11. The conventional rate case processing plan would have provided ORA an opportunity to review the applications for deficiencies and expedite litigation.
12. TURN and UCAN performed significant analysis in these proceedings and their effectiveness would benefit from participating in an NOI process for the next general rate case.
13. TURN and ORA actively litigated the majority of the SoCalGas 2004 Test Year issues and the major portion of the costs recoverable in the revenue requirement.
14. Greenlining, SCGC, UWUA and Local 483 did not actively litigate the majority of the SoCalGas Test Year 2004 issues or the major portion of the costs.

15. UCAN and ORA actively litigated the majority of the SDG&E 2004 Test Year issues and the major portion of the costs recoverable in the revenue requirement.

16. Greenlining, CUE, City of Chula Vista and Coral did not actively litigate the majority of the SDG&E Test Year 2004 issues or the major portion of the costs.

17. Greenlining, SCGC, UWUA, CUE, and Coral did not file opening or reply litigation briefs.

18. The Joint Comparison Exhibits, Ex. 149 and Ex. 150, for both SoCalGas and SDG&E, respectively, adequately summarize the end-of-litigation agreements on estimates between the applicants and the intervenors.

19. The turn-off/turn-on of gas service prior to home fumigation is safety-related as defined in § 328(b).

20. Resolution G-3344, allowed SoCalGas and SDG&E to temporarily apply Z-Factor treatment to recover the cost of fumigation turn-off/turn-on of service.

21. Customers will not decide to fumigate a house simply because there is no separate turn-off/turn-on charge. A separate fee to fumigators or customers could provide an inappropriate incentive for them to perform the turn-off/turn-on service themselves.

22. There is no fair basis to impose a one-way balancing account for fumigation related work orders to shut-off and restart service.

23. The applicants' forecasts regarding the costs associated with fumigation are reasonable.

24. SDG&E owns 20% minority-interest of the San Onofre Nuclear Generating Station (SONGS) along with two other minority-interest owners, the City of Anaheim and the City of Riverside.

25. Southern California Edison is the majority-owner and the operating agent of SONGS.

26. The O&M and capital expenditures associated with SONGS was litigated in the SCE GRC proceeding A.02-05-004

27. The Commission identified the reasonable SONGS 2004 capital expenditures and O&M expenses for SDG&E in D.04-07-022.

28. The new Nuclear Regulatory Commission requirements are not a known charge that can be updated within the meaning of D.89-01-040.

29. SDG&E's recovery of SONGS incremental revenue requirements for TY 2004 beyond the scope of capital expenditures in A.02-05-004 is reasonable, subject to refund and a clear and complete showing by SDG&E.

30. SDG&E's recovery of SONGS 2005 O&M costs is beyond the test year for this proceeding.

31. The Otay Mesa Pressure Betterment Project 2466 would modify SDG&E's gas transmission system to allow multi-directional flow through the Otay Mesa Metering Station.

32. The project interconnects SDG&E with an unregulated foreign Sempra affiliate, *Transportadora de Gas Natural de Baja California*.

33. SDG&E does not have a contract with a gas supplier and does not have approvals from both the Federal Energy Regulatory Commission and the U.S. Department of Energy for gas to flow northward.

34. D.04-09-022 authorized SoCalGas and SDG&E to establish receipt points, as needed, at Otay Mesa, Salt Works Station, Center Road Station, or at other receipt points that may be needed to access regasified LNG.

35. D.04-09-022 allows LNG suppliers to make application to the Commission to roll costs of system enhancements required for LNG transportation into rate base after the project is complete.

36. The Otay Mesa Pressure Betterment Project is not providing service at this time, it is not used and useful, and should not be in the 2004 rate base.

37. Vegetation management is a major expense, subject to significant potential crises: fire, flood, pests and drought.

38. The primary objectives of the Sustainable Communities Project include ensuring environmentally sensitive energy solutions, stimulating the distributed generation industry, supporting and partnering with interested developers, and promoting energy and demand savings.

39. With respect to gas system planning for both companies, the supplemental testimony was insufficient as a part of adopting the projected test year capital expenditures and the operating expenses to support planning and oversight of the gas systems.

40. The Greenlining Settlements with SoCalGas and SDG&E make four commitments on workforce diversity, supplier diversity, philanthropy and annual meetings.

41. Although the Commission supports the goal of workforce diversity, the Commission has no jurisdiction over work force diversity within SoCalGas and SDG&E.

42. The Commission's policy does not allow funding for philanthropic contributions in regulated utility rates.

43. Corporate philanthropy is not a cost recoverable in retail rates.

44. The Side Settlement Agreement between Greenling and SoCalGas and SDG&E does not ask the Commission to link executive compensation with philanthropy.

45. The Commission reviews the SoCalGas and SDG&E Settlements pursuant to Rule 51.1(e) of the Commission's Rules of Practice and Procedure, which provides that the Commission must find a settlement reasonable in light of the whole record, consistent with the law, and in the public interest.

46. The Settlements represent a compromise of the strongly-held views of the sponsoring parties.

47. The Settling Parties fairly reflect the affected interests in this proceeding.

48. No term of the Settlements contravenes statutory provisions or prior Commission decisions.

49. The record supports the Settling Parties agreements.

50. With the exception of two modifications, the Settlements are fair, just and in the public interest.

Conclusions of Law

1. The SoCalGas Settlement is in the public interest, consistent with the law, and should be approved.

2. The SDG&E Settlement is in the public interest, consistent with the law, and should be approved with two modifications.

3. The Otay Mesa Pressure Betterment Project should be removed as part of the capital additions for SDG&E.

4. The SDG&E's portion of the SONGS revenue should be adjusted to reflect the amount adopted in D.04-07-022 in SCE's GRC, the proceeding in which the SONGS issue was litigated.

5. It is reasonable for SDG&E to maintain its one-way balancing account for tree trimming vegetation management costs.

6. SDG&E should pursue the refinement of its Sustainable Communities Project and to present future proposals in greater detail - the projects that will be pursued, detailed criteria that the company would consistently apply in choosing and serving projects – in future cost of service or general rate case proceedings.

7. The legal obligation of the Commission is to establish just and reasonable rates to enable SoCalGas and SDG&E to provide safe and reliable service for the convenience of the public, ratepayers, and employees, while earning for shareholders a fair return on the property the companies employ in providing service.

8. A.02-12-024 and A.02-12-028 are not subject to the rate case processing plan, D.89-01-040.

9. It is reasonable to require SoCalGas and SDG&E to file NOIs of their next rate applications and to file in conformance with the Commission's rate case processing plan.

10. It is reasonable to allow TURN and UCAN, in addition to ORA, to review the NOIs and provide SoCalGas and SDG&E with deficiencies in the applications.

11. We have no basis upon which to address the level of SoCalGas' and SDG&E's philanthropic contributions.

12. The Side Settlement Agreement between Greenlining and SoCalGas and SDG&E should be commended and endorsed.

O R D E R

IT IS ORDERED that:

1. Application (A.) 02-12-027 is granted to the extent set forth in this order. Southern California Gas Company (SoCalGas) is authorized to collect, through rates and through authorized ratemaking accounting mechanisms, the 2004 Test Year Base Margin set forth in Appendix F.
2. A.02-12-028 is granted to the extent set forth in this order. San Diego Gas & Electric Company (SDG&E) is authorized to collect, through rates and through authorized ratemaking accounting mechanisms, the 2004 Test Year Base Margin for Natural Gas Service as set forth in Appendix D.
3. A.02-12-028 is granted to the extent set forth in this order. SDG&E is authorized to collect, through rates and through authorized ratemaking accounting mechanisms, the 2004 Test Year Base Margin for Electric Service as set forth in Appendix E.
4. Within 40 days of the effective date of this order, SoCalGas and SDG&E shall file revised tariff sheets to implement the electric and gas revenue requirements set forth in Appendices D, E and F. Tariffs shall become effective on the first day of the month following the advice letter filing.
5. SDG&E shall continue to maintain its one-way balancing account for tree trimming vegetation management costs.
6. SDG&E shall establish a balancing account, subject to refund, for new incremental security costs at the San Onofre Nuclear Generating Station (SONGS) as imposed by Nuclear Regulatory Commission and discussed in this decision.
7. SoCalGas and SDG&E shall refine and enhance the ratemaking model spreadsheets before the next rate proceeding and eliminate all instances of

manual data transfers within the models and for the tables and reports generated by the models to support the results of operations, rate base and other ratemaking tools.

8. We direct the interested parties to plan, schedule and conduct workshops in the first quarter of 2005 to develop a better format for presenting Shared Services in SoCalGas and SDG&E's next base revenue ratemaking proceeding.

9. SoCalGas and SDG&E shall comply with the Commission's rate case processing plan, as modified herein, when they next file for any change in authorized base electric and gas revenue requirements.

10. Phase One of A.02-12-027 and A.02-12-028 is concluded. These consolidated proceedings and Investigation 03-03-016 remain open for Phase Two.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
List of Appearances

The current service lists for these proceedings are available on the Commission's web site, at the following links:

1. http://www.cpuc.ca.gov/published/service_lists/A0212027_50027.htm
2. http://www.cpuc.ca.gov/published/service_lists/A0212028_50027.htm

Further assistance is available by contacting the Process Office at (415) 703-2021.

(END OF APPENDIX A)

APPENDIX B

List of Acronyms and Abbreviations

A. - Application

ACR – Assigned Commissioner’s Ruling

AHE49NS – Average Hourly Earnings for workers in the Electric, Gas and Sanitary Sectors of the U.S. economy

ALJ – Administrative Law Judge

BCAP – Biennial Cost Allocation Proceeding

CAD – Computer Aided Drafting

CalTrans – California Department of Transportation

Coral – Coral Energy Resources, LP

COS – Cost of Service

CPS – Capital Project Summary

CSA – Comprehensive Settlement Agreement

CUE – California Utility Employees

D. – Decision

DOT – Department of Transportation

DRID – Defense Reform Initiated Directive

Edison – Southern California Edison Company

ERISA – Employee Retirement Income Security Act (of 1974)

FEA – Federal Executive Agency

GCSF – Gas Consumption Surcharge Fund

GEMS – Gas Energy Measurement Systems

GO – General Order

GRC – General Rate Case

Greenlining – Greenlining Institute

I. - Investigation

ICIP – Incremental Cost Incentive Proceeding

IRS – Internal Revenue Service

JCE – Joint Comparison Exhibit

JGTOTALMS – UCIS constructed Index

Local 483 – Local 483 UWUA

MPC – Margin Per Customer

NEIL – Nuclear Electric Insurance Ltd.

NGVA – Natural Gas Vehicle Account

NOI – Notice of Intent

NorthStar – NorthStar Consulting Group

NRC – Nuclear Regulatory Commission

O&M – Operating and Maintenance

OP – Ordering Paragraph

ORA – Office of Ratepayer Advocates

Otay Mesa – Otay Mesa Metering Station

PHC – Prehearing Conference

PG&E – Pacific Gas and Electric Company

PBR – Performance Based Ratemaking

R. – Rulemaking

RO – Results of Operations

Rules – Rules of Practice and Procedure

SANDAG – San Diego Association of Governments

SCGC – Southern California Generation Coalition

Sempra – Sempra Energy

SoCalGas – Southern California Gas Company

SONGS – San Onofre Nuclear Generating Station

SDG&E – San Diego Gas & Electric Company

SDG&E Settling Parties – Collectively are the following: SDG&E, ORA
Greenlining, Coral and CUE

Sustainable Community – Sustainable Community Energy Systems

TGN - Transportadora de Gas Natural

TLCBA – True Labor Cost Balancing Account

TURN – The Utility Reform Network

UCAN – Utility Consumers’ Action Network

UWUA – Utility Workers Union of America

(END OF APPENDIX B)

Brown Comment Alternate Dec. Appendixes C-F